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FEDERAL COMMUNICATIONS COMMISSION

[DA 13-618]

Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications and Reminder of the Spectrum Act's Preservation Mandate

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces an immediate limitation on the filing and processing of full power and class A television station modification applications and also reminds television broadcast stations of the Spectrum Act's Preservation Mandate. See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, Title VI, 125 Stat. 156 (2012) ("Spectrum Act"). This action will facilitate Commission analysis of repacking methodologies and assure that the objectives of the broadcast television incentive auction, as mandated by the Spectrum Act, are not frustrated. See Spectrum Act at Section 6403(b)(2).

DATES: This filing and processing limitation become effective on April 5, 2013.

FOR FURTHER INFORMATION CONTACT: Barbara Kreisman, Chief, Video Division, Media Bureau, Federal Communications Commission, barbara.kreisman@fcc.gov, (202) 418-1600.

SUPPLEMENTARY INFORMATION:

I. Limitations on the Filing and Processing of Modification Applications: Beginning immediately, and until further notice, the Media Bureau will not accept for filing modification applications (or amendments to pending modification applications) by full power and Class A television broadcast licensees and permittees for changes to existing television service areas that

would increase a full power station's noise-limited contour or a Class A station's protected contour in one or more directions beyond the area resulting from the station's present parameters as represented in its authorizations (license and/or construction permit).¹ Similarly, the Media Bureau will not accept Class A displacement applications that would increase the station's protected contour. However, consistent with the Commission's proposal in the Notice of Proposed Rulemaking, 77 FR 69933 (Nov. 21, 2012),² Class A minor change applications to implement the digital transition (flash cut and digital companion channel) may continue to be filed and will be processed subject to the current limitations in Sections 73.3572(a)(2) and 74.787(a)(2) of the Commission's rules.

The Bureau will consider, on a case-by-case basis, requests for waiver of the filing limitation imposed by this public notice when a modification application is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public, such as when zoning restrictions preclude tower construction at a particular site or when unforeseen events, such as extreme weather events or other extraordinary circumstances, require relocation to a new tower site. As with any request for waiver of our rules, such a request will be granted only on a showing of good cause and when grant of the waiver will serve the public interest.

With respect to pending full power and Class A modification applications, we will process those applications that do not increase the full power station's noise-limited contour or the Class A

¹ See 47 CFR § 73.622(e)(1) (defining "service area" of a full power TV broadcast station). As to Class A stations, protected contour is consistent with the proposed interpretation of the statutory term "coverage area" in the NPRM. See Expanding the Economic and Innovative Opportunities of Spectrum Through Incentive Auctions, Docket No. 12-268, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, 12390, para. 99 (2012) ("NPRM").

² Id. at 12397, para. 115 ("We do propose to protect in the repacking process certain digital Class A facilities that were not licensed as of February 22, 2012.").

station's protected contour in one or more directions beyond the area resulting from the station's present parameters as represented in its authorizations (license and/or construction permit).

Applicants at variance with this limitation may amend their applications within 60 days of the Public Notice to comply with this limitation or request a waiver. Pending applications that are not amended consistent with this public notice will be processed after the Commission's release of a Report and Order in the Incentive Auction rulemaking proceeding, subject to the rules and policies adopted therein.³

II. Spectrum Act Preservation Mandate: We take this opportunity to remind stations that, as provided in the Spectrum Act and the NPRM, the extent to which a facility that is not covered by Section 6403(b)(2) (a "non-covered facility") will be preserved in the repacking process will be decided by the Commission in the Incentive Auction rulemaking proceeding.⁴

For stations with non-covered authorized facilities, we take this opportunity to remind them, before additional investments are made in these non-covered facilities, that the extent to which the non-covered facility will be preserved in the repacking process will be decided by the Commission in the Incentive Auction rulemaking proceeding.⁵

³ The decision to impose these limitations on the filing and processing of modification applications is procedural in nature, and therefore is not subject to the notice and comment and effective date requirements of the Administrative Procedure Act. See 5 U.S.C. 553(b)(A), (d); see also Neighborhood TV Co. v. FCC, 742 F.2d 629, 637-38 (D.C. Cir. 1984) (holding that the Commission's filing freeze is a procedural rule not subject to the notice and comment requirements of the Administrative Procedure Act); Buckeye Cablevision, Inc. v. United States, 438 F.2d 948, 952-53 (6th Cir. 1971); Kessler v. FCC, 326 F.2d 673, 680-82 (D.C. Cir. 1963). Moreover, we find that there is good cause for not delaying the effect of these procedures until 30 days after publication in the Federal Register. Such a delay would be impractical, unnecessary, and contrary to the public interest because it would undercut the purposes of these procedures. See 5 U.S.C. 553(b)(B), (d)(3).

⁴ See Spectrum Act at Sections 6403(b)(2), 6403(i)(1); NPRM, 27 FCC Rcd at 12390, 12397 paras. 98, 113.

Accordingly, the Media Bureau will process applications from permittees modifying their non-covered facilities to revert to the service area resulting from the station's licensed facilities as of February 22, 2012. If a permittee of a non-covered facility fails to file for this modification, the extent of preservation of the non-covered facility will be determined by the Commission in the Incentive Auction rulemaking proceeding.

This action is taken by the Chief, Media Bureau pursuant to authority delegated by 47 CFR 0.283 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION.

Barbara Kreisman,
Chief, Video Division,
Media Bureau

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⁵ Id.